

CHAPTER 407

CREDIT SERVICE ORGANIZATIONS

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407.635. Definitions. - As used in sections 407.635 to 407.644, the following words and phrases shall mean:

(1) **"Buyer"**, an individual who is solicited to purchase or who purchases the services of a credit services organization;

(2) **"Consumer reporting agency"** has the meaning assigned by section 603(f) of the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f);

(3) **"Extension of credit"**, the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal family or household purposes.
(L. 1991 S.B. 112 § 1)

407.637. Credit service organization - exemptions. - 1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides or represents that the person can or will provide any of the following services:

(1) Improving the buyer's credit record, history or rating;

(2) Obtaining an extension of credit for a buyer; or

(3) Providing advice or assistance to a buyer with regard to subdivision (1) or (2) of this subsection.

2. The following are exempt from the provisions of sections 407.635 to 407.644:

(1) A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act, 12 U.S.C. Section 1701, et seq.;

(2) A bank or savings and loan association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation, or a subsidiary of such a bank or savings and loan association;

(3) A credit union doing business in this state;

(4) A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(5) A person licensed as a real estate broker or salesperson pursuant to chapter 339, RSMo, acting within the course and scope of that license;

(6) A person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;

(8) A consumer reporting agency; and

(9) A person whose primary business is making loans secured by liens on real property;

(10) A person who is licensed as a certified public accountant pursuant to chapter 326, RSMo, acting within the course and scope of that license; or an individual who is enrolled to practice before the Internal Revenue Service; or an accountant, who is accredited by the Accreditation Council for Accountancy.
(L. 1991 S.B. 112 § 2)

407.638. Prohibited activities. - A credit services organization, a salesperson, agent or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with section 407.639 a surety bond in the amount required by subsection 4 of section 407.639, issued by a surety company authorized to do business in this state, or has established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required by subsection 5 of section 407.639 is held in trust as required by section 407.639;

(2) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

(3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

(a) Guaranteeing to **"erase bad credit"** or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

(b) Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

(4) Engage, directly or indirectly, in a fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services organization;

(5) Make, or advise a buyer to make, a statement with respect to a buyer's credit worthiness, credit standing or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the director of finance, unless otherwise provided by this chapter.
(L. 1991 S.B. 112 § 3)

407.639. Copy of bond to be filed with director of finance - purpose of bond - amount of bond - statement by director of finance. - 1. This section applies to a credit services organization required by subdivision (1) of section 407.638 to obtain a surety bond or establish a surety account.

2. If a bond is obtained, a copy of it shall be filed with the director of finance. If a surety account is established, notification of the depository, the trustee and the account number shall be filed with the director of finance.

3. The bond or surety account required shall be in favor of the state for the benefit of any person who is damaged by any violation of sections 407.635 to 407.644. The bond or surety account shall also be in favor of any person damaged by such a violation.

4. Any person claiming against the bond or surety account for a violation of sections 407.635 to 407.644 may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under subdivision (1) of subsection 1 of section 407.644 and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter may not exceed the amount of the surety account or bond.

5. The bond or the surety account shall be in the amount of ten thousand dollars.

6. A depository holding money in a surety account under sections 407.635 to 407.644 shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the director of finance indicating that section 407.640* has been satisfied in relation to the credit services organization. The director of finance may conduct investigations and require submission of information as is necessary to enforce this section.

7. The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

(L. 1991 S.B. 112 § 4)

*Revisor's note: Original rolls contain reference to "subsection 6 of section 5" (407.640). An apparent typographical error since section 407.640 does not contain a subsection 6. All of section 407.640 seems germane to the original reference.

407.640. Registration statements, filing, contents. - 1. A credit services organization shall file a registration statement with the director of finance before conducting business in this state. The registration statement must contain:

(1) The name and address of the credit services organization; and

(2) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

2. The registration statement must also contain either:

(1) A full and complete disclosure of any litigation or unresolved complaint filed by or with a governmental authority of this state relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed by or with a

governmental authority of this state relating to the operation of the credit services organization.

3. The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

4. Each credit services organization registering under this section shall maintain a copy of the registration statement in the office of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

5. The director of finance may charge each credit services organization that files a registration statement with the director of finance a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The director of finance may not require a credit services organization to provide information other than that provided in the registration statement as part of the registration process.

(L. 1991 S.B. 112 § 5)

407.641. Contract, writing, contents. - 1. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) A statement explaining the buyer's right to proceed against the bond or surety account required by subdivision (1) of section 407.638;

(3) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account;

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.;

(5) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;

(6) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) A complete and accurate statement of when consumer information becomes obsolete and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

2. The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

(L. 1991 S.B. 112 § 6)

407.642. Contract requirements, cancellation clause. - 1. Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer and must include:

(1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows:

"YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT";

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated length of time, not to exceed one hundred eighty days, for performing the services; and

(4) The address of the credit services organization's principal place of business and the name and address of its registered agent in the state authorized to receive service of process.

2. The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"NOTICE OF CANCELLATION
YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE DAYS AFTER THE DATE THE CONTRACT IS SIGNED. IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THIS CONTRACT WILL BE RETURNED WITHIN TEN DAYS AFTER THE DATE OF RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE. TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED DATED COPY OF THIS CANCELLATION NOTICE, OR OTHER WRITTEN NOTICE TO:

(NAME OF SELLER) AT (ADDRESS OF SELLER) (PLACE OF BUSINESS) NOT LATER THAN MIDNIGHT (DATE). I HEREBY CANCEL THIS TRANSACTION.

DATE: _____

BUYER'S SIGNATURE: _____ "

3. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

4. The breach by a credit services organization of a contract under this section, or of any obligation arising from a contract under this section, is a violation of sections 407.635 to 407.644.

(L. 1991 S.B. 112 § 7)

407.643. Waiver of buyer's rights void. - 1. A credit services organization may not attempt to cause a buyer to waive a right under sections 407.635 to 407.644.

2. A waiver by a buyer of any part of sections 407.635 to 407.644 is void.

(L. 1991 S.B. 112 § 8)

407.644. Actions - damages - penalties. - 1. (1) A buyer injured by a violation of sections 407.635 to 407.644 may bring an action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

(2) The buyer may also be awarded punitive damages.

2. The attorney general or a buyer may bring an action in a court of competent jurisdiction to enjoin a violation of sections 407.635 to 407.644.

3. A violation of sections 407.635 to 407.644 is an unlawful practice pursuant to sections 407.010 to 407.130, and the violator shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130.

4. An action may not be brought under subsection 1 or 3 of this section after four years after the date of the execution of the contract for services to which the action relates.

5. A person who violates any provision of sections 407.635 to 407.644 is guilty of a class B misdemeanor.

6. In an action under this section the burden of proving an exemption under section 407.637 is on the person claiming the exemption.

7. The remedies provided by sections 407.635 to 407.644 are in addition to other remedies provided by law.

(L. 1991 S.B. 112 §§ 9 to 15)

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